

EXHIBIT 11

From: [Li, Yan-Xin](#)
To: [Afinogenova, Alina](#); [Sheh, Anthony](#); [Haunschild, Philip](#); [McLennan, Mark C.](#)
Cc: [#KEModernaSpikevaxService](#); [Horstman, N. Kaye](#); ["Arbutus MoFo"](#); [Parrado, Alvaro](#); [Elenberg, Falcia](#); [Komis, Jihad](#); [Genevant Team](#); [Berl, David](#); [Mahaffy, Shaun](#); [Harber, Adam](#); [Fletcher, Thomas](#); [Ryen, Jessica](#); ["NTan@mofo.com"](#); [Bolte, Erik](#); [*jshaw@shawkeller.com](#); ["kkeller@shawkeller.com"](#); ["nhoeschen@shawkeller.com"](#); ["EWiener@mofo.com"](#); ["began@mnat.com"](#); ["tmurray@morrisnichols.com"](#); ["jblumenfeld@morrisnichols.com"](#); [Hurst, James F.](#); [Carson, Patricia A.](#); [Wacker, Jeanna](#)
Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information) - HIGHLY CONFIDENTIAL OCEO
Date: Thursday, December 7, 2023 9:51:49 PM

Tony and Philip:

Further to your email of November 15 and the parties' meet and confer on November 17, we understand that Plaintiffs are seeking production of Moderna's contracts associated with batches manufactured outside the United States ("OUS") and sold to customers OUS. Plaintiffs proposed that Moderna produce these documents first for Plaintiffs to assess whether additional information about the OUS batches should be produced (e.g., COAs).

Plaintiffs appear to suggest that Moderna's OUS batches are a "sale" within the ambit of 35 U.S.C. § 271(a). We disagree. As the *Cal. Inst. of Tech. v. Broadcom Ltd.* court noted, there is no dispute that § 271(a) "appl[ies] only domestically," and the issue is whether "the relevant transactions [] were domestic or extraterritorial in nature." *Cal. Inst. of Tech. v. Broadcom Ltd.*, 25 F.4th 976, 992 (Fed. Cir. 2022). Yet as your November 15 email concedes, OUS batches are manufactured OUS and sold to customers OUS—i.e., extraterritorial in nature. See 11/15/2023 P. Haunschild Email ("certain batches were simply manufactured abroad"). Plaintiffs have not identified any relevance or basis for seeking discovery of extraterritorial sales or activities. And indeed, the *Broadcom* court further noted that "the key question" is "whether there were such **substantial activities** in the United States," which there are not for Moderna's OUS batches. See *Broadcom*, 25 F.4th at 993 (discussing *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 831 F.3d 1369 (Fed. Cir. 2016), including how pricing and contracting negotiations in the United States alone **do not** constitute or transform those extraterritorial activities into a sale under § 271(a) (emphasis added)). In addition, the Federal Circuit noted that the place of signing a contract is only one of many factors to consider in determining the location of a "sale" under § 271(a). See *Carnegie Mellon Univ. v. Marvell Tech. Grp., Ltd.*, 807 F.3d 1283, 1309 (Fed. Cir. 2015). To hold otherwise would effectively extend the scope of § 271(a) to "confer a worldwide exclusive right to a U.S. patent holder, which is contrary to the statute and case law." *Halo*, 831 F.3d at 1379.

Batches that were manufactured OUS and sold to customers OUS are therefore beyond the scope of Plaintiffs' accusations of infringement. This is not because of "Moderna's own self-serving analysis," but rather precedential case law on this issue, including cases Plaintiffs identified. Moderna will not permit an unduly burdensome fishing expedition by Plaintiffs into its extraterritorial business.

Best regards,
 Yan-Xin

Yan-Xin Li

KIRKLAND & ELLIS LLP
 555 California Street, San Francisco, CA 94104
 T +1 415 439 1618
 F +1 415 439 1500

yanxin.li@kirkland.com

From: Afinogenova, Alina <alina.afinogenova@kirkland.com>
Sent: Tuesday, December 5, 2023 6:48 PM
To: Sheh, Anthony <ASheh@wc.com>; Haunschild, Philip <phaunschild@wc.com>; McLennan, Mark

C. <mark.mclennan@kirkland.com>

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; Parrado, Alvaro <alvaro.parrado@kirkland.com>; Elenberg, Falcia <felenberg@wc.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; 'NTan@mofo.com' <NTan@mofo.com>; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; 'kkeller@shawkeller.com' <kkeller@shawkeller.com>; 'nhoeschen@shawkeller.com' <nhoeschen@shawkeller.com>; 'EWiener@mofo.com' <EWiener@mofo.com>; 'began@mnat.com' <began@mnat.com>; 'tmurray@morrisnichols.com' <tmurray@morrisnichols.com>; 'jblumenfeld@morrisnichols.com' <jblumenfeld@morrisnichols.com>; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information) - HIGHLY CONFIDENTIAL OCEO

Tony,

In follow-up to our November 10 email relating to the production of samples from 400+ lots of expired drug product, we are continuing to work through the burdensome exercise of setting up the logistics to make said production, which we now expect to be in a position to do in January. We will provide an update with additional information as soon as we are able.

Regards,
Alina

Alina Afinogenova

KIRKLAND & ELLIS LLP

200 Clarendon Street, Boston, MA 02116

T +1 617 385 7526 **M** +1 917 324 5094

F +1 212 446 4900

alina.afinogenova@kirkland.com

From: Sheh, Anthony <ASheh@wc.com>

Sent: Wednesday, November 29, 2023 6:16 PM

To: Afinogenova, Alina <alina.afinogenova@kirkland.com>; Haunschild, Philip <phaunschild@wc.com>; McLennan, Mark C. <mark.mclennan@kirkland.com>

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; Parrado, Alvaro <alvaro.parrado@kirkland.com>; Elenberg, Falcia <felenberg@wc.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>;

Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; 'NTan@mofo.com' <NTan@mofo.com>; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; 'kkeller@shawkeller.com' <kkeller@shawkeller.com>; 'nhoeschen@shawkeller.com' <nhoeschen@shawkeller.com>; 'EWiener@mofo.com' <EWiener@mofo.com>; 'began@mnat.com' <began@mnat.com>; 'tmurray@morrisnichols.com' <tmurray@morrisnichols.com>; 'jblumenfeld@morrisnichols.com' <jblumenfeld@morrisnichols.com>; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information) - HIGHLY CONFIDENTIAL OCEO

Mark,

Could you please let us know if Moderna has an update regarding our questions on sample shipping and storage? If there additional arrangements that need to be made, we'd like to start putting them in place. Thanks.

Best,
Tony

Anthony Sheh | Associate | Williams & Connolly LLP | (202) 434-5436 | [ycard](#)

From: Sheh, Anthony <ASheh@wc.com>

Sent: Monday, November 20, 2023 6:06 PM

To: Afinogenova, Alina <alina.afinogenova@kirkland.com>; Haunschild, Philip <phaunschild@wc.com>; McLennan, Mark C. <mark.mclennan@kirkland.com>

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; Parrado, Alvaro <alvaro.parrado@kirkland.com>; Elenberg, Falcia <felenberg@wc.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; 'NTan@mofo.com' <NTan@mofo.com>; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; 'kkeller@shawkeller.com' <kkeller@shawkeller.com>; 'nhoeschen@shawkeller.com' <nhoeschen@shawkeller.com>; 'EWiener@mofo.com' <EWiener@mofo.com>; 'began@mnat.com' <began@mnat.com>; 'tmurray@morrisnichols.com' <tmurray@morrisnichols.com>; 'jblumenfeld@morrisnichols.com' <jblumenfeld@morrisnichols.com>; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information) - HIGHLY CONFIDENTIAL OCEO

Mark and Alina,

Further to Moderna's November 10 email and the meet-and-confer on November 17, Plaintiffs

understand that Moderna's production of the ~480 batches/lots referenced below does not resolve the parties' dispute as to the remaining batches, but we appreciate Moderna's efforts to narrow the scope of the parties' dispute. We understand that the ~480 batches Moderna is agreeing to produce are being transferred by a third-party to another location. We also understand that Moderna is not withholding samples as to post-complaint batches. We understand that Moderna is looking into whether there are post-complaint batches that are due to imminently expire and that the parties' should have ample time before expiry to address samples from Moderna's ongoing booster production.

Plaintiffs are willing to consider covering the cost for Moderna to ship the samples and/or for a courier. As discussed, please let us know an estimate of the shipping costs. Additionally, we'd appreciate information regarding storage conditions and the capacity needed to store the samples. Assuming that the conditions are as before [REDACTED] Plaintiffs currently have 90% capacity left in a 19.4 cubic feet (549 L) freezer with interior dimensions of 51.2 in x 23.1 in x 28.3 (H x W x D, 130.1 cm x 58.8 cm x 97.37 cm) and will acquire additional space if needed. The shipping address would be:

Triclinic Labs, Inc.
Attn: Sample Submission
2660 Schuyler Ave. Ste. A.
Lafayette, IN 47905

Plaintiffs understand that Moderna considers batches that were not manufactured or imported into the U.S. to be batches "not accused of infringement." As outlined in previous correspondence, Plaintiffs disagree that such batches are not accused. *See, e.g., E.g.*, D.I. 1 ¶¶ 50–54, 70, 89, 108, 130, 154. Plaintiffs understand that Moderna is investigating the scope of documents it is willing to produce concerning these batches, including its agreements with the relevant third-parties for sales of such batches (besides the U.S. Government, and whether located in the United States or abroad, and whether to a public or private entity), its communications with such third-parties concerning sales or offers to sell batches of the Accused Product, documents evidencing the location and timing of any negotiations or meetings regarding such sales, and Moderna's marketing and strategic plans regarding such sales. Such documents are responsive to at least Plaintiffs' RFPs 51, 53, 60, 64, 69, 74, 75, 81, and 83. Please confirm the scope of documents that Moderna will agree to produce by December 1, 2023.

Best,
Tony

Anthony Sheh | Associate | Williams & Connolly LLP | (202) 434-5436 | [vcard](#)

From: Afinogenova, Alina <alina.afinogenova@kirkland.com>

Sent: Thursday, November 16, 2023 11:07 AM

To: Haunschild, Philip <phaunschild@wc.com>; McLennan, Mark C. <mark.mclennan@kirkland.com>; Sheh, Anthony <ASheh@wc.com>

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin

<yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; Parrado, Alvaro <alvaro.parrado@kirkland.com>; Elenberg, Falcia <felenberg@wc.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; 'NTan@mofo.com' <NTan@mofo.com>; Bolte, Erik <ebolte@wc.com>; [*jshaw@shawkeller.com](mailto:jshaw@shawkeller.com) <jshaw@shawkeller.com>; 'kkeller@shawkeller.com' <kkeller@shawkeller.com>; 'nhoeschen@shawkeller.com' <nhoeschen@shawkeller.com>; 'EWiener@mofo.com' <EWiener@mofo.com>; 'began@mnat.com' <began@mnat.com>; 'tmurray@morrisnichols.com' <tmurray@morrisnichols.com>; 'jblumenfeld@morrisnichols.com' <jblumenfeld@morrisnichols.com>; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

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Hi Philip,

We are not available before 3pm ET today, but can be available tomorrow before 12pm ET or between 1 and 3pm ET.

Thank you,
Alina

Alina Afinogenova

KIRKLAND & ELLIS LLP

200 Clarendon Street, Boston, MA 02116

T +1 617 385 7526 **M** +1 917 324 5094

F +1 212 446 4900

alina.afinogenova@kirkland.com

From: Haunschild, Philip <phaunschild@wc.com>

Sent: Wednesday, November 15, 2023 11:20 AM

To: McLennan, Mark C. <mark.mclennan@kirkland.com>; Sheh, Anthony <ASheh@wc.com>

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; Afinogenova, Alina <alina.afinogenova@kirkland.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; Parrado, Alvaro <alvaro.parrado@kirkland.com>; Elenberg, Falcia <felenberg@wc.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; 'NTan@mofo.com' <NTan@mofo.com>; Bolte, Erik <ebolte@wc.com>; [*jshaw@shawkeller.com](mailto:jshaw@shawkeller.com) <jshaw@shawkeller.com>; 'kkeller@shawkeller.com' <kkeller@shawkeller.com>; 'nhoeschen@shawkeller.com' <nhoeschen@shawkeller.com>; 'EWiener@mofo.com' <EWiener@mofo.com>; 'began@mnat.com'

<began@mnat.com>; 'tmurray@morrisnichols.com' <tmurray@morrisnichols.com>;
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<jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information) - HIGHLY
CONFIDENTIAL OCEO

Hi Mark,

Thank you for your email. Please let us know when Moderna is available to meet-and-confer tomorrow before 3:00 PM (ET) regarding Moderna's proposal as to the samples that Moderna has agreed to produce. We have a number of questions that we would like to address on the meet-and-confer, including at least the following:

- Does your email mean to draw a distinction between the "lots" that Moderna is agreeing to produce and the "batches" that the parties have previously been discussing? We understand these to be interchangeable terms, but please let us know if that is wrong.
- How did Moderna select the approximately 480 lots that it has agreed to produce samples from?
- Is Moderna refusing to produce samples from any unexpired lots?
- Will Moderna be producing samples from lots manufactured after February 28, 2022, the date of the filing of the complaint?
- For part numbers with unexpired lots, will Moderna be producing both expired and unexpired lots from the same part number?
- What is Moderna's position as to representativeness and the ability to argue non-infringement of lots that Moderna is not agreeing to produce samples from?
- Has Moderna determined whether there are additional part numbers for Drug Product or mRNA-LNP beyond those that we have identified in our October 31, 2023 email?

-
Further, regarding the batches that Moderna will be providing samples from, we have made clear in multiple meet-and-confers in March, April, and November, and in separate correspondence, *e.g.*, March 3, 2023 Letter from A. Sheh; May 11, 2023 Letter from L. Cash, that Moderna's refusal to provide discovery on the basis that certain batches were simply manufactured abroad is improper. Moderna cannot shield batches from discovery based on Moderna's own self-serving analysis of whether such batches infringe. *See, e.g., California Inst. of Tech. v. Broadcom Ltd.*, 25 F.4th 976, 992 (Fed. Cir. 2022); *Carnegie Mellon Univ. v. Marvell Tech. Grp., Ltd.*, 807 F.3d 1283, 1308 (Fed. Cir. 2015). Plaintiffs are entitled to take relevant discovery regarding all batches that have been accused of infringement. Please be prepared to discuss this on our meet-and-confer. Please also be prepared to explain how Moderna is determining what batches "can be accused of infringement."

Thank you,

Philip N. Haunschild

Associate | Williams and Connolly LLP

680 Maine Avenue SW, Washington, DC 20024

202-434-5979 phaunschild@wc.com | www.wc.com

From: McLennan, Mark C. <mark.mclennan@kirkland.com>

Sent: Friday, November 10, 2023 3:00 PM

To: Sheh, Anthony <ASheh@wc.com>

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; Afinogenova, Alina <alina.afinogenova@kirkland.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; Parrado, Alvaro <alvaro.parrado@kirkland.com>; Elenberg, Falcia <felenberg@wc.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; 'NTan@mofo.com' <NTan@mofo.com>; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; 'kkeller@shawkeller.com' <kkeller@shawkeller.com>; 'nhoeschen@shawkeller.com' <nhoeschen@shawkeller.com>; 'EWiener@mofo.com' <EWiener@mofo.com>; 'began@mnat.com' <began@mnat.com>; 'tmurray@morrisnichols.com' <tmurray@morrisnichols.com>; 'jblumenfeld@morrisnichols.com' <jblumenfeld@morrisnichols.com>; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

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CONTAINS INFORMATION MODERNA HAS DESIGNATED HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY

Counsel,

Regarding Plaintiffs’ questions from the meet-and-confer on the number of vials per lot Moderna is able to produce from regulatory retains, we confirm that Moderna maintains its agreement to produce 3 vials per lot. This is proportional to the needs of the case in light of the extensive data Moderna is agreeing to produce about each lot, in the absence of any explanation from Plaintiffs as to why more than 3 vials is needed, and due to Moderna’s need to retain samples for regulatory and compliance purposes, as laid out in detail in our October 20, 2023 letter.

With regard to the number of accused lots that Moderna will produce samples from, in the spirit of compromise and in an effort to narrow the dispute, Moderna is preparing to produce samples of 3 vials of expired drug product from approximately 480 lots. We will provide the lot numbers shortly, but can confirm they correspond to the part numbers below. Moderna will produce (if not already produced) specifications for these part numbers and CoAs for each lot later today or Monday (we

are still waiting for the final production volume). Moderna will continue to making rolling productions of additional CoAs and specifications for accused batches as we review them, but we wanted to prioritize these 480 lots first.

Moderna will make this production in the spirit of compromise and does so without waiving any objections to Plaintiffs' RFPs for samples from the remaining accused batches (both the number of samples and quantity of lots). Moderna also makes this production without any representations that the expired drug product is representative of its characteristics at release. Moderna will agree to this production if Plaintiffs agree to pay for the shipping costs or arrange a courier to collect the vials in a single shipment – please confirm Plaintiffs' position by COB November 15, including confirmation of a shipping address if Plaintiffs request that Moderna ship the samples.

We are confirming the exact timing of the production but we understand it can be made in the next two weeks.

Regarding your questions on the batches at issue in this case, we're surprised by Plaintiffs' recent change in position, attempting to dramatically expand the scope of discovery at this late stage. Moderna has been consistent and clear in its position that it would not provide discovery on batches not accused of infringement:

- Moderna’s February 2, 2023 Objections to 1st RFPs (including general objection: “Moderna objects to Plaintiffs’ requests to the extent they seek information, documents, and/or things relating to batches and doses of the Accused Products not accused of infringement, including batches of doses of the Accused Products not made, used, offered for sale, or sold within the United States or imported into the United States, which are not accused of infringement. Moderna will not produce irrelevant information, documents, and/or things concerning such batches and doses.”)
- Moderna’s April 17, 2023 Objections to Rog. 11 (“Moderna objects to this Interrogatory to the extent it seeks information related to the identity of manufactured lots and/or batches that were not made, used, offered for sale, or sold within the United States or imported into the United States.”)
- McLennan Sept. 19, 2023 Letter (“ Moderna offered to produce samples of drug product that were made with each part number of mRNA-LNP that was made, sold, or imported into the

U.S.”)

- McLennan July 21, 2023 Email (“Moderna confirms it has produced information in MRNA-GEN-00456085 and MRNA-GEN-00456086 showing batches of Moderna’s COVID-19 Vaccine manufactured *in the U.S.*”)

Our objections to Interrogatory No. 11, and all correspondence concerning it since then have been crystal clear that Moderna is properly limiting discovery concerning batches to those that can be accused of infringement. Although you take statements from our August 1, 2023 letter out of context, in reality we repeated the same objection in that letter. McLennan August 1, 2023 Letter (“Moderna did not agree that Moderna is broadly required to “produce information regarding that foreign activity.” . . . If you have support indicating that batches made outside the U.S. and never imported into the U.S. can constitute infringement of a U.S. patent, we remain willing to consider it.”). Despite Moderna consistently placing Plaintiffs on notice of its position, Plaintiffs delayed raising this purported issue for months. Unfortunately this appears to be yet another attempt to delay resolution of the sample dispute and **exponentially** increase the burden of Moderna’s discovery.

Regards,
Mark

Mark C. McLennan

KIRKLAND & ELLIS LLP

601 Lexington Avenue, New York, NY 10022
T +1 212 909 3451

mark.mclennan@kirkland.com

From: Sheh, Anthony <ASheh@wc.com>

Sent: Tuesday, November 7, 2023 11:42 AM

To: Afinogenova, Alina <alina.afinogenova@kirkland.com>; Parrado, Alvaro <alvaro.parrado@kirkland.com>; McLennan, Mark C. <mark.mclennan@kirkland.com>; Elenberg, Falicia <felenberg@wc.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; 'NTan@mofo.com' <NTan@mofo.com>; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; 'kkeller@shawkeller.com' <kkeller@shawkeller.com>; 'nhoeschen@shawkeller.com' <nhoeschen@shawkeller.com>; 'EWiener@mofo.com' <EWiener@mofo.com>

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Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

Alina,

Thanks for your email and for confirming that Moderna will be producing CoAs and specifications, as well as responding to Plaintiffs' inquiry regarding the number of vials Moderna is willing to produce per batch, this week. The part numbers below were intended to assist Moderna, necessitated by Moderna's incomplete responses to Plaintiffs' Interrogatories Nos. 6 and 11, and based on Plaintiffs' efforts to analyze information that has been readily available in the first instance to Moderna, not Plaintiffs. We appreciate that Moderna will be producing CoAs and specifications this week, but both of these have been the subject of months-long requests. Plaintiffs have been prejudiced and continue to be prejudiced by Moderna's delays.

With respect your points below regarding batches purportedly "not accused of infringement," Plaintiffs' Complaint alleges that Moderna infringes the patent-in-suit by *inter alia* "manufacturing, offering to sell, selling, or using within the United States, the Accused Product." *E.g.*, D.I. 1 ¶¶ 70, 89, 108, 130, 154. The Complaint further addresses "doses made in the United" but "administered abroad," contracts Moderna has entered worldwide, and "emergency authorizations" for Moderna's COVID-19 vaccine "from more than 70 countries, including Canada, Israel, the United Kingdom, Switzerland, Singapore, Qatar, Taiwan, and the Philippines, as well as from the European Union." D.I. 1 ¶¶ 50–54. With respect to "foreign" batches, Moderna's August 1, 2023 letter (at 7) acknowledges that Moderna's response to Plaintiffs' Interrogatory No. 11 "may provide all of the information Plaintiffs want and/or need," but Moderna has not supplemented its response to Interrogatory No. 11. In any event, Moderna cannot unilaterally shield from discovery batches it contends were assertedly "not made, sold, used, or imported into the U.S." *See, e.g., Carnegie Mellon Univ. v. Marvell Tech. Grp., Ltd.*, 807 F.3d 1283, 1308 (Fed. Cir. 2015) ("Places of seeming relevance [to a sale] include a place of inking the legal commitment to buy and sell and a place of delivery . . . and perhaps also a place where other 'substantial activities of the sales transactions' occurred."). Plaintiffs are entitled to discovery into these issues and to test Moderna's as-of-yet unsupported contentions. Moderna's email suggests, contrary to its August 1, 2023 letter, that Moderna's response to Interrogatory No. 11 in fact will *not* include information on batches Moderna contends to be "not accused of infringement" on the basis of such batches being "ex-US" or "OUS," which is improper.

Please therefore confirm (1) that the batches Moderna has "identified to date" extends to *all* of the batches Moderna has manufactured and/or sold, regardless of whether that activity occurred in the United States or purportedly not, (2) that Moderna's responses to Plaintiffs' Interrogatory Nos. 6 and 11 will not exclude batches simply because Moderna deems them to be batches "not accused of infringement," and (3) that Moderna's listing or identification of part numbers for the purpose of sample production will include *all* batches. To the extent that Moderna has been excluding "ex-US" or "OUS" batches from discovery, please inform us of Moderna's basis for doing so. Please provide Moderna's confirmation by this Friday, November 10, 2023, so that Plaintiffs can promptly seek relief from the Court if necessary.

Best,

Tony

Anthony Sheh | Associate | Williams & Connolly LLP | (202) 434-5436 | [vcard](#)

From: Afinogenova, Alina <alina.afinogenova@kirkland.com>

Sent: Friday, November 3, 2023 5:35 PM

To: Sheh, Anthony <ASheh@wc.com>; Parrado, Alvaro <alvaro.parrado@kirkland.com>; McLennan, Mark C. <mark.mclennan@kirkland.com>; Elenberg, Falicia <felenberg@wc.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; 'NTan@mofo.com' <NTan@mofo.com>; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; 'kkeller@shawkeller.com' <kkeller@shawkeller.com>; 'nhoeschen@shawkeller.com' <nhoeschen@shawkeller.com>; 'EWiener@mofo.com' <EWiener@mofo.com>

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; 'began@mnat.com' <began@mnat.com>; 'tmurray@morrisnichols.com' <tmurray@morrisnichols.com>; 'jblumenfeld@morrisnichols.com' <jblumenfeld@morrisnichols.com>; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

CONTAINS INFORMATION MODERNA HAS DESIGNATED HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY

Tony,

As we will explain in more detail when we respond to your letter on Plaintiffs’ 2nd set of RFPs, in the spirit of compromise, next week we expect to produce Moderna’s CoAs for accused batches of DP, mRNA-1273 LNP, and [REDACTED] identified to-date. We trust this (in addition to the drug product genealogy spreadsheet) will resolve many, if not all, of your questions below. We expect to produce additional specifications next week too, and are still investigating whether a complete listing of part numbers exists.

We note that from your email below, which lists many part numbers not referenced in earlier correspondence, Plaintiffs appear to now be seeking information concerning batches that were not made, sold, used, or imported into the U.S. and thus not accused of infringement. Moderna has been clear in its objections to the RFPs, and in correspondence concerning samples since then, that Moderna is not producing samples from batches that are not accused of infringement. We maintain that such batches bear no relevance to this litigation, and thus collection of samples and information from those batches is unduly burdensome and not proportionate to the needs of the case.

We hope to get back to you next week on whether Moderna agrees to produce more than 3 vials per batch.

Have a nice weekend,
Alina

Alina Afinogenova

KIRKLAND & ELLIS LLP

200 Clarendon Street, Boston, MA 02116

T +1 617 385 7526 **M** +1 917 324 5094

F +1 212 446 4900

alina.afinogenova@kirkland.com

From: Sheh, Anthony <ASheh@wc.com>

Sent: Tuesday, October 31, 2023 2:53 PM

To: Parrado, Alvaro <alvaro.parrado@kirkland.com>; Afinogenova, Alina <alina.afinogenova@kirkland.com>; McLennan, Mark C. <mark.mclennan@kirkland.com>; Elenberg, Falicia <felenberg@wc.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; 'NTan@mofo.com' <NTan@mofo.com>; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; 'kkeller@shawkeller.com' <kkeller@shawkeller.com>; 'nhoeschen@shawkeller.com' <nhoeschen@shawkeller.com>; 'EWiener@mofo.com' <EWiener@mofo.com>

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; 'began@mnat.com' <began@mnat.com>; 'tmurray@morrisnichols.com' <tmurray@morrisnichols.com>; 'jblumenfeld@morrisnichols.com' <jblumenfeld@morrisnichols.com>; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

CONTAINS INFORMATION MODERNA HAS DESIGNATED HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY

Mark,

Plaintiffs understood from our meet-and-confer on October 23, 2023, that Moderna would be getting back to us last week regarding whether it would be willing to produce more than three vials from a batch. Could you please let us know by COB tomorrow the results of Moderna’s investigation?

Likewise, Plaintiffs have been working to narrow the parties’ dispute regarding samples with respect to the number of vials. For Moderna’s convenience, we have been able to identify the following

drug product part numbers based on information Moderna has produced to date: [REDACTED]

[REDACTED] Could you please confirm whether there are any other drug product part numbers that are at issue, including for ex-US batches? We have excluded "unlabeled" drug product part numbers from this set, but if those are relevant, please let us know. For the part numbers that are *not* in bold, we have been unable to identify a specification sheet in MRNA-GEN-VOL013 to ascertain the lipid content per vial. Could you please confirm that Moderna will produce these specification sheets this week?

We'd also like to make sure that the parties share an understanding of the mRNA LNP part numbers that are at issue with respect to Moderna's proposal. As set forth in Plaintiffs' September 6, 2023 letter, we are aware of the following part numbers: [REDACTED]

[REDACTED] Please confirm whether there are any other mRNA LNP part numbers at issue. We understand from Moderna's August 24, 2023 letter that it has been working to collect and produce specifications for each part number relevant to batches of the Accused Product.

We are happy to discuss any of the foregoing by phone if helpful. Thanks.

Best,
Tony

Anthony Sheh | Associate | Williams & Connolly LLP | (202) 434-5436 | [vcard](#)

From: Parrado, Alvaro <alvaro.parrado@kirkland.com>

Sent: Friday, October 20, 2023 6:28 PM

To: Sheh, Anthony <ASheh@wc.com>; Afinogenova, Alina <alina.afinogenova@kirkland.com>; McLennan, Mark C. <mark.mclennan@kirkland.com>; Elenberg, Falicia <felenberg@wc.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; 'NTan@mofo.com' <NTan@mofo.com>; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; 'kkeller@shawkeller.com' <kkeller@shawkeller.com>; 'nhoeschen@shawkeller.com' <nhoeschen@shawkeller.com>; 'EWiener@mofo.com' <EWiener@mofo.com>

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; 'began@mnat.com' <began@mnat.com>; 'tmurray@morrisnichols.com' <tmurray@morrisnichols.com>; 'jblumenfeld@morrisnichols.com' <jblumenfeld@morrisnichols.com>; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

Counsel,

Please see the attached case correspondence.

Thank you,

Alvaro R. Parrado

Senior Paralegal | Intellectual Property

KIRKLAND & ELLIS LLP

601 Lexington Avenue, New York, NY 10022

T +1 212 909 3407 M +1 212-960-8542

F +1 212 446 4900

alvaro.parrado@kirkland.com

From: Sheh, Anthony <ASheh@wc.com>

Sent: Friday, October 20, 2023 5:58 PM

To: Afinogenova, Alina <alina.afinogenova@kirkland.com>; McLennan, Mark C. <mark.mclennan@kirkland.com>; Elenberg, Falcia <felenberg@wc.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; 'NTan@mofo.com' <NTan@mofo.com>; Bolte, Erik <ebolte@wc.com>; jshaw@shawkeller.com <jshaw@shawkeller.com>; 'kkeller@shawkeller.com' <kkeller@shawkeller.com>; 'nhoeschen@shawkeller.com' <nhoeschen@shawkeller.com>; 'EWiener@mofo.com' <EWiener@mofo.com>

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; 'began@mnat.com' <began@mnat.com>; 'tmurray@morrisnichols.com' <tmurray@morrisnichols.com>; 'jblumenfeld@morrisnichols.com' <jblumenfeld@morrisnichols.com>; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

Thanks Alina. We can use the following dial-in:

Call in (audio only)

[+1 872-242-8083](tel:+18722428083),149140221# United States, Chicago

Phone Conference ID: 149 140 221#

[Find a local number](#)

Anthony Sheh | Associate | Williams & Connolly LLP | (202) 434-5436 | ycard

From: Afinogenova, Alina <alina.afinogenova@kirkland.com>

Sent: Friday, October 20, 2023 1:11 PM

To: Sheh, Anthony <ASheh@wc.com>; McLennan, Mark C. <mark.mclennan@kirkland.com>;

Elenberg, Falicia <felenberg@wc.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; 'NTan@mofo.com' <NTan@mofo.com>; Bolte, Erik <ebolte@wc.com>; [*jshaw@shawkeller.com](mailto:jshaw@shawkeller.com) <jshaw@shawkeller.com>; 'kkeller@shawkeller.com' <kkeller@shawkeller.com>; 'nhoeschen@shawkeller.com' <nhoeschen@shawkeller.com>; 'EWiener@mofo.com' <EWiener@mofo.com>

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; 'began@mnat.com' <began@mnat.com>; 'tmurray@morrisnichols.com' <tmurray@morrisnichols.com>; 'jblumenfeld@morrisnichols.com' <jblumenfeld@morrisnichols.com>; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

Tony,

We are available at 2:30pm ET on Monday.

Regards,
Alina

Alina Afinogenova

KIRKLAND & ELLIS LLP

200 Clarendon Street, Boston, MA 02116

T +1 617 385 7526 **M** +1 917 324 5094

F +1 212 446 4900

alina.afinogenova@kirkland.com

From: Sheh, Anthony <ASheh@wc.com>

Sent: Friday, October 20, 2023 11:39 AM

To: McLennan, Mark C. <mark.mclennan@kirkland.com>; Elenberg, Falicia <felenberg@wc.com>; Afinogenova, Alina <alina.afinogenova@kirkland.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; 'NTan@mofo.com' <NTan@mofo.com>; Bolte, Erik <ebolte@wc.com>; [*jshaw@shawkeller.com](mailto:jshaw@shawkeller.com) <jshaw@shawkeller.com>; 'kkeller@shawkeller.com' <kkeller@shawkeller.com>; 'nhoeschen@shawkeller.com' <nhoeschen@shawkeller.com>; 'EWiener@mofo.com' <EWiener@mofo.com>

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; 'began@mnat.com'

<began@mnat.com>; 'tmurray@morrisnichols.com' <tmurray@morrisnichols.com>;
'jblumenfeld@morrisnichols.com' <jblumenfeld@morrisnichols.com>; Hurst, James F.
<james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna
<jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

Mark,

Since it appears that Moderna believes that the parties may still have a dispute, please let us know when you are available to meet and confer on Monday with Delaware counsel present. Plaintiffs are available after 12 p.m. ET. We look forward to receiving Moderna's response regarding samples later today. Thanks.

Best,
Tony

Anthony Sheh | Associate | Williams & Connolly LLP | (202) 434-5436 | vcard

From: McLennan, Mark C. <mark.mclennan@kirkland.com>

Sent: Friday, October 20, 2023 10:52 AM

To: Sheh, Anthony <ASheh@wc.com>; Elenberg, Falcia <felenberg@wc.com>; Afinogenova, Alina
<alina.afinogenova@kirkland.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team
<GenevantTeam@wc.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; Berl, David
<DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>;
Fletcher, Thomas <TFletcher@wc.com>; Ryan, Jessica <JRyen@wc.com>; 'NTan@mofo.com'
<NTan@mofo.com>; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com
<jshaw@shawkeller.com>; 'kkeller@shawkeller.com' <kkeller@shawkeller.com>;
'nhoeschen@shawkeller.com' <nhoeschen@shawkeller.com>; 'EWiener@mofo.com'
<EWiener@mofo.com>

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<yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; 'began@mnat.com'
<began@mnat.com>; 'tmurray@morrisnichols.com' <tmurray@morrisnichols.com>;
'jblumenfeld@morrisnichols.com' <jblumenfeld@morrisnichols.com>; Hurst, James F.
<james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna
<jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

Tony,

Thanks for your email. We're still investigating a couple of outstanding issues concerning the samples in an effort to try to narrow the issues in dispute, and hope to respond later today. We'll be available to meet and confer after that whenever Plaintiffs are ready.

We disagree that Moderna has delayed this process; instead Moderna has worked expeditiously to investigate ways to reach a compromise on Plaintiffs' unreasonable demands.

Thanks,
Mark

Mark C. McLennan

KIRKLAND & ELLIS LLP

601 Lexington Avenue, New York, NY 10022

T +1 212 909 3451

mark.mclennan@kirkland.com

From: Sheh, Anthony <ASheh@wc.com>

Sent: Friday, October 20, 2023 8:35 AM

To: McLennan, Mark C. <mark.mclennan@kirkland.com>; Elenberg, Falicia <felenberg@wc.com>; Afinogenova, Alina <alina.afinogenova@kirkland.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; 'NTan@mofo.com' <NTan@mofo.com>; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; 'kkeller@shawkeller.com' <kkeller@shawkeller.com>; 'nhoeschen@shawkeller.com' <nhoeschen@shawkeller.com>; 'EWiener@mofo.com' <EWiener@mofo.com>

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Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

Mark,

Thanks for your note. Plaintiffs understood that we would be hearing back from Moderna yesterday regarding sample production, which is a months (if not years) long dispute that Plaintiffs have taken significant efforts to resolve with Moderna to no avail. Plaintiffs have been prejudiced by Moderna's delays in this process.

Please let us know your availability to meet and confer today so that we can promptly raise this dispute with the Court.

We will await Moderna's response to our October 6, 2023 letter regarding Moderna's R&D documents, but note that Plaintiffs raised the issues therein in our meet-and-confer on September 15, 2023, and we have been waiting over a month for a response.

Thanks.

Best,
Tony

Anthony Sheh | Associate | Williams & Connolly LLP | (202) 434-5436 | [vcard](#)

From: McLennan, Mark C. <mark.mclennan@kirkland.com>

Sent: Wednesday, October 18, 2023 10:09 AM

To: Elenberg, Falicia <felenberg@wc.com>; Afinogenova, Alina <alina.afinogenova@kirkland.com>; Sheh, Anthony <ASheh@wc.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryan, Jessica <JRyen@wc.com>; 'NTan@mofo.com' <NTan@mofo.com>; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; 'kkeller@shawkeller.com' <kkeller@shawkeller.com>; 'nhoeschen@shawkeller.com' <nhoeschen@shawkeller.com>; 'EWiener@mofo.com' <EWiener@mofo.com>

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; 'began@mnat.com' <began@mnat.com>; 'tmurray@morrisnichols.com' <tmurray@morrisnichols.com>; 'jblumenfeld@morrisnichols.com' <jblumenfeld@morrisnichols.com>; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

Falicia,

Thank you for your email. We are hoping to get back to you today or tomorrow on the samples issue.

We are also reviewing your October 6 letter on "R&D-related documents" which addresses the same RFPs that Plaintiffs separately wrote to us about in two other letters on October 9. We are preparing a response to those three letters and will get back to you as soon as possible. We note we've been waiting for a response to our September 7 letter on Moderna's 1st set of RFPs for six weeks now.

Thanks,
Mark

Mark C. McLennan

KIRKLAND & ELLIS LLP

601 Lexington Avenue, New York, NY 10022

T +1 212 909 3451

mark.mclennan@kirkland.com

From: Elenberg, Falicia <felenberg@wc.com>

Sent: Wednesday, October 18, 2023 9:59 AM

To: Afinogenova, Alina <alina.afinogenova@kirkland.com>; Sheh, Anthony <ASheh@wc.com>; McLennan, Mark C. <mark.mclennan@kirkland.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; 'NTan@mofo.com' <NTan@mofo.com>; Bolte, Erik <ebolte@wc.com>; [*jshaw@shawkeller.com](mailto:jshaw@shawkeller.com) <jshaw@shawkeller.com>; 'kkeller@shawkeller.com' <kkeller@shawkeller.com>; 'nhoeschen@shawkeller.com' <nhoeschen@shawkeller.com>; 'EWiener@mofo.com' <EWiener@mofo.com>

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; 'began@mnat.com' <began@mnat.com>; 'tmurray@morrisnichols.com' <tmurray@morrisnichols.com>; 'jblumenfeld@morrisnichols.com' <jblumenfeld@morrisnichols.com>; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

Counsel,

You have not responded to our October 6th letters regarding sample production and R&D-related documents, nor have we heard back from you regarding your availability to meet-and-confer on the matter. Plaintiffs are highly prejudiced by Defendants' refusal to produce and resolve these crucial categories of material. Please let us know your availability to meet-and-confer today (Oct. 18th) or tomorrow (Oct. 19th). If we do not hear from you regarding a time to meet-and-confer by close of business today, Plaintiffs' will consider the parties to be at an impasse.

Best,
Falicia

Falicia Elenberg

Law Clerk | Williams & Connolly LLP

680 Maine Avenue, S.W., Washington, DC 20024

202-434-5989 | felenberg@wc.com | www.wc.com

From: Elenberg, Falicia

Sent: Monday, October 16, 2023 8:57 AM

To: Afinogenova, Alina <alina.afinogenova@kirkland.com>; Sheh, Anthony <ASheh@wc.com>; McLennan, Mark C. <mark.mclennan@kirkland.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; NTan@mofo.com; Bolte, Erik <ebolte@wc.com>; [*jshaw@shawkeller.com](mailto:jshaw@shawkeller.com) <jshaw@shawkeller.com>; kkeller@shawkeller.com; nhoeschen@shawkeller.com; EWiener@mofo.com

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; began@mnat.com; tmurray@morrisnichols.com; jblumenfeld@morrisnichols.com; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

Counsel,

We have not received response to our October 6, 2023 letters concerning sample production and Moderna's production of documents relating to its research and development of the Accused Product. So that Plaintiffs can promptly resolve these disputes, could you please let us know your availability tomorrow or Wednesday to meet and confer? We are available tomorrow (Tuesday) from 11 a.m. – 12 p.m. and 2 p.m. – 3 p.m. ET or Wednesday before 2 p.m. ET. Thanks.

Best,

Falicia

Falicia Elenberg

Law Clerk | Williams & Connolly LLP

680 Maine Avenue, S.W., Washington, DC 20024

202-434-5989 | felenberg@wc.com | www.wc.com

From: Elenberg, Falicia <felenberg@wc.com>

Sent: Friday, October 6, 2023 6:04 PM

To: Afinogenova, Alina <alina.afinogenova@kirkland.com>; Sheh, Anthony <ASheh@wc.com>; McLennan, Mark C. <mark.mclennan@kirkland.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; NTan@mofo.com; Bolte, Erik <ebolte@wc.com>; jshaw@shawkeller.com; keller@shawkeller.com; nhoesch@shawkeller.com; EWiener@mofo.com

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; began@mnat.com; tmurray@morrisnichols.com; jblumenfeld@morrisnichols.com; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

Hello all,

Please see the attached correspondence.

Falicia Elenberg

Law Clerk | Williams & Connolly LLP

680 Maine Avenue, S.W., Washington, DC 20024

202-434-5989 | felenberg@wc.com | www.wc.com

From: Afinogenova, Alina <alina.afinogenova@kirkland.com>

Sent: Tuesday, October 3, 2023 8:17 PM

To: Sheh, Anthony <ASheh@wc.com>; McLennan, Mark C. <mark.mclennan@kirkland.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; NTan@mofo.com; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; kkeller@shawkeller.com; nhoeschen@shawkeller.com; EWiener@mofo.com

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; began@mnat.com; tmurray@morrisnichols.com; jblumenfeld@morrisnichols.com; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

Hi Tony,

Based on the meet-and-confer last week, we understand the parties are each going to reconsider their positions and respond.

In the meantime, please confirm that Plaintiffs will reimburse Moderna for the doses and the associated shipping and handling costs. For example, Plaintiffs' current request for the equivalent of 100 mg of lipids per batch, and samples from 10% of batches, could exceed 10,000 doses, which is clearly a significant expense and burden on Moderna.

Thank you,
Alina

Alina Afinogenova

KIRKLAND & ELLIS LLP

200 Clarendon Street, Boston, MA 02116

T +1 617 385 7526 **M** +1 917 324 5094

F +1 212 446 4900

alina.afinogenova@kirkland.com

From: Sheh, Anthony <ASheh@wc.com>

Sent: Wednesday, September 27, 2023 6:32 PM

To: Afinogenova, Alina <alina.afinogenova@kirkland.com>; McLennan, Mark C. <mark.mclennan@kirkland.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>; Berl, David

<DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryan, Jessica <JRyen@wc.com>; NTan@mofo.com; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; kkeller@shawkeller.com; nhoeschen@shawkeller.com; EWiener@mofo.com
Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; began@mnat.com; tmurray@morrisnichols.com; jblumenfeld@morrisnichols.com; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

Thanks Alina, that works for us. We can use the following dial-in:

Call in (audio only)

[+1 872-242-8083, 631822421#](tel:+18722428083631822421) United States, Chicago

Phone Conference ID: 631 822 421#

[Find a local number](#)

Anthony Sheh | Associate | Williams & Connolly LLP | (202) 434-5436 | [vcard](#)

From: Afinogenova, Alina <alina.afinogenova@kirkland.com>

Sent: Wednesday, September 27, 2023 11:08 AM

To: Sheh, Anthony <ASheh@wc.com>; McLennan, Mark C. <mark.mclennan@kirkland.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryan, Jessica <JRyen@wc.com>; NTan@mofo.com; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; kkeller@shawkeller.com; nhoeschen@shawkeller.com; EWiener@mofo.com

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; began@mnat.com; tmurray@morrisnichols.com; jblumenfeld@morrisnichols.com; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

Tony,

We can be available at 2pm ET on Thursday.

Regards,

Alina

Alina Afinogenova

KIRKLAND & ELLIS LLP

200 Clarendon Street, Boston, MA 02116

T +1 617 385 7526 M +1 917 324 5094

F +1 212 446 4900

alina.afinogenova@kirkland.com

From: Sheh, Anthony <ASheh@wc.com>

Sent: Tuesday, September 26, 2023 9:28 PM

To: McLennan, Mark C. <mark.mclennan@kirkland.com>; Afinogenova, Alina <alina.afinogenova@kirkland.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; NTan@mofo.com; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; kkeller@shawkeller.com; nhoesch@shawkeller.com; EWiener@mofo.com

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; began@mnat.com; tmurray@morrisnichols.com; jblumenfeld@morrisnichols.com; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

Hi Mark,

Unfortunately 4 p.m. tomorrow doesn't work for us. Would sometime on Thursday from 1–4 p.m. ET work? Thanks.

Best,
Tony

Anthony Sheh | Associate | Williams & Connolly LLP | (202) 434-5436 | vcard

From: McLennan, Mark C. <mark.mclennan@kirkland.com>

Sent: Monday, September 25, 2023 4:31 PM

To: Sheh, Anthony <ASheh@wc.com>; Afinogenova, Alina <alina.afinogenova@kirkland.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; NTan@mofo.com; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; kkeller@shawkeller.com; nhoesch@shawkeller.com; EWiener@mofo.com

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; began@mnat.com; tmurray@morrisnichols.com; jblumenfeld@morrisnichols.com; Hurst, James F.

<james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

Tony,

We're available on Wednesday at 4pm ET.

Thanks,
Mark

Mark C. McLennan

KIRKLAND & ELLIS LLP

601 Lexington Avenue, New York, NY 10022

T +1 212 909 3451

mark.mclennan@kirkland.com

From: Sheh, Anthony <ASheh@wc.com>

Sent: Friday, September 22, 2023 10:01 PM

To: McLennan, Mark C. <mark.mclennan@kirkland.com>; Afinogenova, Alina <alina.afinogenova@kirkland.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; NTan@mofo.com; Bolte, Erik <ebolte@wc.com>; [*jshaw@shawkeller.com](mailto:jshaw@shawkeller.com) <jshaw@shawkeller.com>; kkeller@shawkeller.com; nhoeschen@shawkeller.com; EWiener@mofo.com

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; began@mnat.com; tmurray@morrisnichols.com; jblumenfeld@morrisnichols.com; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

With apologies to all who celebrate—I forgot that Monday is Yom Kippur. As such, please let us know if Tuesday or Wednesday would work. Thanks.

Anthony Sheh | Associate | Williams & Connolly LLP | (202) 434-5436 | vcard

From: Sheh, Anthony <ASheh@wc.com>

Sent: Friday, September 22, 2023 9:45 PM

To: McLennan, Mark C. <mark.mclennan@kirkland.com>; Afinogenova, Alina <alina.afinogenova@kirkland.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>;

Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; NTan@mofo.com; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; kkeller@shawkeller.com; nhoesch@shawkeller.com; EWiener@mofo.com
Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; began@mnat.com; tmurray@morrisnichols.com; jblumenfeld@morrisnichols.com; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>
Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

Mark,

Could you please let us know your availability to meet and confer regarding your September 19 letter this Monday or Tuesday? Thanks.

Best,
Tony

Anthony Sheh | Associate | Williams & Connolly LLP | (202) 434-5436 | vcard

From: McLennan, Mark C. <mark.mclennan@kirkland.com>
Sent: Tuesday, September 19, 2023 5:05 PM
To: Sheh, Anthony <ASheh@wc.com>; Afinogenova, Alina <alina.afinogenova@kirkland.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; NTan@mofo.com; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; kkeller@shawkeller.com; nhoesch@shawkeller.com; EWiener@mofo.com
Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; began@mnat.com; tmurray@morrisnichols.com; jblumenfeld@morrisnichols.com; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>
Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

Tony,

Please see the attached letter. We're available to meet and confer.

Thanks,
Mark

Mark C. McLennan

KIRKLAND & ELLIS LLP

601 Lexington Avenue, New York, NY 10022
T +1 212 909 3451

mark.mclennan@kirkland.com

From: Sheh, Anthony <ASheh@wc.com>

Sent: Monday, September 18, 2023 8:21 PM

To: McLennan, Mark C. <mark.mclennan@kirkland.com>; Afinogenova, Alina <alina.afinogenova@kirkland.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; NTan@mofo.com; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; kkeller@shawkeller.com; nhoesch@shawkeller.com; EWiener@mofo.com

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; began@mnat.com; tmurray@morrisnichols.com; jblumenfeld@morrisnichols.com; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

Mark,

Could you please provide Moderna's response to Plaintiffs' September 6 letter regarding samples? As we noted in the letter, this dispute has been pending for more than 8 months, and Plaintiffs intend to raise this dispute with the Court shortly if the parties cannot reach agreement. Thanks.

Best,
Tony

Anthony Sheh | Associate | Williams & Connolly LLP | (202) 434-5436 | ycard

From: McLennan, Mark C. <mark.mclennan@kirkland.com>

Sent: Friday, September 8, 2023 5:14 PM

To: Sheh, Anthony <ASheh@wc.com>; Afinogenova, Alina <alina.afinogenova@kirkland.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; NTan@mofo.com; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; kkeller@shawkeller.com; nhoesch@shawkeller.com; EWiener@mofo.com

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; began@mnat.com; tmurray@morrisnichols.com; jblumenfeld@morrisnichols.com; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna

<jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

Tony,

We're in receipt of your letter from Wednesday night. We note that you took two weeks to respond to our August 24 letter and demanded a response within two days. We are looking into questions raised in your letter, including numerous new inquiries, and will respond next week.

Best,
Mark

Mark C. McLennan

KIRKLAND & ELLIS LLP

601 Lexington Avenue, New York, NY 10022

T +1 212 909 3451

mark.mclennan@kirkland.com

From: Sheh, Anthony <ASheh@wc.com>

Sent: Wednesday, September 6, 2023 10:31 PM

To: Afinogenova, Alina <alina.afinogenova@kirkland.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; NTan@mofo.com; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; kkeller@shawkeller.com; nhoeschen@shawkeller.com; EWiener@mofo.com

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; McLennan, Mark C. <mark.mclennan@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; began@mnat.com; tmurray@morrisnichols.com; jblumenfeld@morrisnichols.com; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

Counsel,

Please see the attached correspondence. Thank you.

Best,
Tony

Anthony Sheh | Associate | Williams & Connolly LLP | (202) 434-5436 | vcard

From: Afinogenova, Alina <alina.afinogenova@kirkland.com>

Sent: Thursday, August 24, 2023 12:23 PM

To: Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Sheh, Anthony <ASheh@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; NTan@mofo.com; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; kkeller@shawkeller.com; nhoeschen@shawkeller.com; EWiener@mofo.com

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; McLennan, Mark C. <mark.mclennan@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; began@mnat.com; tmurray@morrisnichols.com; jblumenfeld@morrisnichols.com; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

Counsel,

Please see the attached correspondence.

Regards,
Alina

Alina Afinogenova

KIRKLAND & ELLIS LLP

200 Clarendon Street, Boston, MA 02116

T +1 617 385 7526 **M** +1 917 324 5094

F +1 212 446 4900

alina.afinogenova@kirkland.com

From: Komis, Jihad <JKomis@wc.com>

Sent: Wednesday, August 16, 2023 6:10 PM

To: McLennan, Mark C. <mark.mclennan@kirkland.com>; Afinogenova, Alina <alina.afinogenova@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; began@mnat.com; tmurray@morrisnichols.com; jblumenfeld@morrisnichols.com; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Cc: Genevant Team <GenevantTeam@wc.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>; #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Sheh, Anthony <ASheh@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; NTan@mofo.com; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; kkeller@shawkeller.com; nhoeschen@shawkeller.com; EWiener@mofo.com

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

Counsel,

Please see the attached correspondence. Thanks.

Regards,
Jihad

Jihad J. Komis

Associate | Williams & Connolly LLP

680 Maine Avenue SW, Washington, D.C., 20024

(P) 202-434-5166 | (F) 202-434-5029

JKomis@wc.com | www.wc.com

From: McLennan, Mark C. <mark.mclennan@kirkland.com>

Sent: Friday, July 21, 2023 2:18 PM

To: Komis, Jihad <JKomis@wc.com>; Afinogenova, Alina <alina.afinogenova@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; began@mnat.com; tmurray@morrisnichols.com; jblumenfeld@morrisnichols.com; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Cc: Genevant Team <GenevantTeam@wc.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>; #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Sheh, Anthony <ASheh@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; NTan@mofo.com; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; kkeller@shawkeller.com; nhoeschen@shawkeller.com; EWiener@mofo.com

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information)

CONFIDENTIAL

Jihad,

Moderna confirms it has produced information in MRNA-GEN-00456085 and MRNA-GEN-00456086 showing batches of Moderna's COVID-19 Vaccine manufactured in the U.S. As we've noted to Plaintiffs many times, the information is burdensome to investigate, and we produced this listing now based on our current investigation to date at Plaintiffs' request. We are still months from close of fact discovery and we will update it as our investigation continues, if needed.

As you know, the parties repeatedly agreed to continue discussing further sample availability once we were able to produce batch history information. Now that Plaintiffs have this batch listing showing more than one thousand batches, please let us know if Plaintiffs are maintaining their request for "50 vials . . . from each" batch. As you can imagine, investigating the availability of this unreasonable and unjustified number of vials across more than one thousand batches is extremely burdensome. We have repeatedly asked Plaintiffs for months to explain why they need 50 vials from

each lot, and have not received a response. Moderna maintains its objections to Plaintiffs' RFPs and Interrogatories in the meantime and reserves all rights.

We look forward to hearing from Plaintiffs about the availability of samples in response to Moderna's RFP No. 125 too.

Regards,
Mark

Mark C. McLennan

KIRKLAND & ELLIS LLP
601 Lexington Avenue, New York, NY 10022
T +1 212 909 3451

mark.mclennan@kirkland.com

From: Komis, Jihad <JKomis@wc.com>

Sent: Thursday, July 20, 2023 6:04 PM

To: Afinogenova, Alina <alina.afinogenova@kirkland.com>; McLennan, Mark C. <mark.mclennan@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; began@mnat.com; tmurray@morrisnichols.com; jblumenfeld@morrisnichols.com; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Cc: Genevant Team <GenevantTeam@wc.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>; #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Sheh, Anthony <ASheh@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; NTan@mofo.com; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; kkeller@shawkeller.com; nhoeschen@shawkeller.com; EWiener@mofo.com

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel

Counsel,

We are in receipt of Moderna's production of July 19, 2023, including the natives produced at MRNA-GEN-00456085 and MRNA-GEN-00456086, which purport to identify batches of Moderna's finished drug product. Could you please confirm whether these documents identify the batches of the Accused Product that Moderna has manufactured to date? Relatedly, we have not heard from Moderna regarding Plaintiffs' email below dated July 13, 2023, regarding the availability of samples from batches of the Accused Product. Could you please confirm that Moderna will provide this information this week?

Regards,
Jihad

Jihad J. Komis

Associate | Williams & Connolly LLP

680 Maine Avenue SW, Washington, D.C., 20024

(P) 202-434-5166 | (F) 202-434-5029

JKomis@wc.com | www.wc.com

From: Komis, Jihad <JKomis@wc.com>

Sent: Thursday, July 13, 2023 4:57 PM

To: Afinogenova, Alina <alina.afinogenova@kirkland.com>; McLennan, Mark C.

<mark.mclennan@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye

<kaye.horstman@kirkland.com>; began@mnat.com; tmurray@morrisnichols.com;

jblumenfeld@morrisnichols.com; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A.

<patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Cc: Genevant Team <GenevantTeam@wc.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>;

#KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Berl, David

<DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Sheh,

Anthony <ASheh@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica

<JRyen@wc.com>; NTan@mofo.com; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com

<jshaw@shawkeller.com>; kkeller@shawkeller.com; nhoesch@shawkeller.com;

EWiener@mofo.com

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel

Counsel,

Thank you for your response. Plaintiffs understand that Moderna has agreed to provide a listing of batch/lot numbers of Moderna's finished drug product by next week. However, Moderna's July 12, 2023 letter does not address Plaintiffs' other longstanding inquiry regarding the availability of samples from those batches. Please confirm that Moderna will provide this information next week, as well.

For avoidance of doubt, Plaintiffs have not agreed to modify the scope of information sought by Interrogatory Nos. 6 and 11, which we understand that Moderna intends to answer substantively later this month. Plaintiffs expect that Moderna will answer the full scope of those interrogatories, and not just provide the "simple listing" referred to in your letter. We disagree with Moderna's assertion that the scope of Interrogatories No. 6 and 11, which seek highly relevant information regarding infringement and damages, imposes any burden with respect to information that Moderna agreed to provide *four months ago*, i.e., a "simple listing" of batches and the availability of samples from those batches. In any event, please confirm that Moderna intends to answer the full scope of Interrogatories Nos. 6 and 11, and is not unilaterally limiting the scope of Plaintiffs' interrogatories based on a misunderstanding of the information Plaintiffs need regarding samples.

Finally, we disagree with the implications in your letter that Moderna's ongoing failure to provide routine discovery information is in any way justified by its request for thousands of prototype formulations sought by RFP No. 125, including those that are not sold or manufactured by Plaintiffs. Moderna's unjustified delay continues to prejudice Plaintiffs' ability to discuss the production of samples of the Accused Product which are at the heart of this case. Plaintiffs reserve all rights.

Regards,
Jihad

Jihad J. Komis

Associate | Williams & Connolly LLP

680 Maine Avenue SW, Washington, D.C., 20024

(P) 202-434-5166 | (F) 202-434-5029

JKomis@wc.com | www.wc.com

From: Afinogenova, Alina <alina.afinogenova@kirkland.com>

Sent: Wednesday, July 12, 2023 8:50 AM

To: Komis, Jihad <JKomis@wc.com>; McLennan, Mark C. <mark.mclennan@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; began@mnat.com; tmurray@morrisnichols.com; jblumenfeld@morrisnichols.com; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Cc: Genevant Team <GenevantTeam@wc.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>; #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Sheh, Anthony <ASheh@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; NTan@mofo.com; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; kkeller@shawkeller.com; nhoeschen@shawkeller.com; EWiener@mofo.com

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel

Counsel,

Please see the attached correspondence.

Best regards,
Alina

Alina Afinogenova

KIRKLAND & ELLIS LLP

200 Clarendon Street, Boston, MA 02116

T +1 617 385 7526 **M** +1 917 324 5094

F +1 212 446 4900

alina.afinogenova@kirkland.com

From: Komis, Jihad <JKomis@wc.com>

Sent: Tuesday, July 11, 2023 5:17 PM

To: McLennan, Mark C. <mark.mclennan@kirkland.com>; Afinogenova, Alina <alina.afinogenova@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye

<kaye.horstman@kirkland.com>; began@mnat.com; tmurray@morrisnichols.com;
jblumenfeld@morrisnichols.com; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A.
<patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>
Cc: Genevant Team <GenevantTeam@wc.com>; Arbutus_MoFo <Arbutus_MoFo@mofo.com>;
#KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Berl, David
<DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Sheh,
Anthony <ASheh@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica
<JRyen@wc.com>; NTan@mofo.com; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com
<jshaw@shawkeller.com>; kkeller@shawkeller.com; nhoesch@shawkeller.com;
EWiener@mofo.com

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel

Counsel,

We have not received any response to our June 29, 2023 correspondence once again requesting that Moderna identify batches of the Accused Product and the availability of samples. As set forth in our correspondence, despite Moderna agreeing months ago to provide this information so that the parties could continue discussing sample production, as well as multiple letters and meet-and-confers on this issue, Moderna continues to withhold this information and has failed to even provide a date certain when it intends to supply it. To date, Moderna has not articulated any reasonable basis for not promptly providing this basic accounting information, and Moderna's unjustified delay continues to prejudice Plaintiffs' ability to litigate this case.

Given Plaintiffs' multiple letters and the parties' multiple meet-and-confers on this issue, Plaintiffs understand that the parties are at an impasse. Plaintiffs thus intend to move the Court this Friday, July 14, 2023, for an order compelling Moderna to identify all batches of the Accused Product and the availability of samples unless Moderna immediately provides this information.

Thank you.

Regards,
Jihad

Jihad J. Komis

Associate | Williams & Connolly LLP

680 Maine Avenue SW, Washington, D.C., 20024

(P) 202-434-5166 | (F) 202-434-5029

JKomis@wc.com | www.wc.com

From: Komis, Jihad

Sent: Thursday, June 29, 2023 5:17 PM

To: 'mark.mclennan@kirkland.com' <mark.mclennan@kirkland.com>;
'alina.afinogenova@kirkland.com' <alina.afinogenova@kirkland.com>; 'yanxin.li@kirkland.com'
<yanxin.li@kirkland.com>; 'kaye.horstman@kirkland.com' <kaye.horstman@kirkland.com>;

'began@mnat.com' <began@mnat.com>; 'tmurray@morrisnichols.com' <tmurray@morrisnichols.com>; 'jblumenfeld@morrisnichols.com' <jblumenfeld@morrisnichols.com>; 'james.hurst@kirkland.com' <james.hurst@kirkland.com>; 'patricia.carson@kirkland.com' <patricia.carson@kirkland.com>; 'jeanna.wacker@kirkland.com' <jeanna.wacker@kirkland.com>

Cc: Genevant Team <GenevantTeam@wc.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; 'KEModernaSpikevaxService@kirkland.com' <KEModernaSpikevaxService@kirkland.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Sheh, Anthony <ASheh@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; 'NTan@mofo.com' <NTan@mofo.com>; Bolte, Erik <ebolte@wc.com>; 'jshaw@shawkeller.com' <jshaw@shawkeller.com>; 'kkeller@shawkeller.com' <kkeller@shawkeller.com>; 'nhoeschen@shawkeller.com' <nhoeschen@shawkeller.com>; 'EWiener@mofo.com' <EWiener@mofo.com>

Subject: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel

Counsel,

Please see the attached correspondence. Thank you.

Regards,
Jihad

Jihad J. Komis

Associate | Williams & Connolly LLP

680 Maine Avenue SW, Washington, D.C., 20024

(P) 202-434-5166 | (F) 202-434-5029

JKomis@wc.com | www.wc.com

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